

**Senate Bill No. 1186**

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Passed the Senate September 1, 2012

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*Secretary of the Senate*

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Passed the Assembly August 31, 2012

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2012, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend, repeal, and add Section 6106.2 of the Business and Professions Code, to amend Sections 55.3, 55.52, 55.53, 55.54, and 55.56 of, to add Sections 55.31, 55.545, and 1938 to, and to add, repeal, and add Section 55.32 of, the Civil Code, to add Section 425.50 to the Code of Civil Procedure, to amend Sections 4459.8 and 8299.05 of, to add Chapter 7.5 (commencing with Section 4465) to Division 5 of Title 1 of, and to repeal and add Sections 8299.06, 8299.07, and 8299.08 of, the Government Code, and to add and repeal Section 18944.5 of the Health and Safety Code, relating to disability access, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1186, Steinberg. Disability access.

(1) Existing law requires an attorney to provide a written advisory to a building owner or tenant with each demand for money or complaint for any construction-related accessibility claim, as specified. A violation of this requirement may subject the attorney to disciplinary action.

This bill would, instead, require an attorney to provide a written advisory with each demand letter or complaint, as defined, sent to or served upon a defendant or potential defendant for any construction-related accessibility claim, as specified. The bill would require the Judicial Council to update the form that may be used by attorneys to comply with this requirement on or before July 1, 2013. The bill would require an allegation of a construction-related accessibility claim in a demand letter or complaint to state facts sufficient to allow a reasonable person to identify the basis for the claim. The bill would require any complaint alleging a construction-related accessibility claim to be verified by the plaintiff, and would make any complaint filed without verification subject to a motion to strike. The bill would prohibit a demand letter from including a request or demand for money or an offer or agreement to accept money. The bill also would prohibit an attorney, or other person acting at the direction of an attorney,

from issuing a demand for money to a building owner or tenant, or an agent or employee of a building owner or tenant, on the basis of one or more construction-related accessibility violations, as specified. The bill would require an attorney to include his or her State Bar license number in a demand letter, and to submit copies of the demand letter to the California Commission on Disability Access and, until January 1, 2016, to the State Bar. The bill also would require, until January 1, 2016, an attorney to submit a copy of a complaint to the commission. The bill would provide that a violation of these requirements may subject the attorney to disciplinary action, as specified.

This bill would require the commission to review and report on the demand letters and complaints it receives until January 1, 2016. The bill also would require the State Bar, commencing July 31, 2013, and annually each July 31 thereafter, to report specified information to the Legislature regarding the demand letters that it receives.

(2) Existing law provides, upon being served with a summons and complaint asserting a construction-related accessibility claim, a qualified defendant, as defined, may file a request for a court stay and early evaluation conference in the proceedings, as specified. Existing law requires the Judicial Council to prepare and post on its Internet Web site instructions and a form for a qualified defendant to use to file an application for stay and early evaluation conference pursuant to this provision.

This bill would permit other defendants to file a request for a court stay and early evaluation conference pursuant to this provision, including (A) a defendant, until January 1, 2018, whose site's new construction or improvement on or after January 1, 2008, and before January 1, 2016, was approved pursuant to the local building permit and inspection process, (B) a defendant whose site's new construction or improvement was approved by a local public building department inspector who is a certified access specialist, and (C) a defendant who is a small business, as described. The bill would require the Judicial Council to prepare and post a form for filing an application for stay and early evaluation conference for use by qualified defendants and these additional defendants, and any additional forms appropriate to implement these provisions, as specified. The bill also would authorize a defendant who does not qualify for an early evaluation

conference pursuant to these provisions, or who forgoes those provisions, to request a mandatory evaluation conference, as specified. The bill would authorize a plaintiff to make that request if the defendant does not make that request.

(3) Existing law provides statutory damages in a construction-related accessibility claim against a place of public accommodation if a violation of construction-related accessibility standards denied the plaintiff full and equal access to that site on a particular occasion. A plaintiff is denied full and equal access only if, on a particular occasion, the plaintiff personally encountered the violation or was deterred from accessing the site. These statutory damages are in the amount of actual damages and any additional amount determined by a jury or the court up to a maximum of 3 times the amount of actual damages but not less than \$4,000, or, for certain violations, \$1,000.

This bill would require the court, in assessing liability in any action alleging multiple claims for the same construction-related accessibility violation on different particular occasions, to consider the reasonableness of the plaintiff's conduct in light of the plaintiff's obligation, if any, to mitigate damages. The bill would reduce a defendant's minimum liability for statutory damages in a construction-related accessibility claim against a place of public accommodation to \$1,000 for each offense if the defendant has corrected all construction-related violations that are the basis of the claim within 60 days of being served with the complaint and other specified conditions apply, and would reduce that minimum liability to \$2,000 for each offense if the defendant has corrected all construction-related violations that are the basis of the claim within 30 days of being served with the complaint and the defendant is a small business, as specified. The bill would require the Department of General Services to make a biannual adjustment to financial criteria defining a small business for these purposes, and to post those adjusted amounts on its Internet Web site.

(4) Existing law requires the State Architect to develop and submit for approval and adoption building standards for making buildings, structures, sidewalks, curbs, and related facilities accessible to, and usable by, persons with disabilities, as specified. Existing law provides for the inspection of places of public accommodation by certified access specialists to determine if the sites meet all applicable construction-related accessibility

standards, and the provision of specified certificates and reports regarding those inspections. Existing law regulates the hiring of real property.

This bill would require a commercial property owner to state on a lease form or rental agreement executed on or after July 1, 2013, if the property being leased or rented has undergone inspection by a certified access specialist.

(5) The federal Americans with Disabilities Act of 1990 and the California Building Standards Code require that specified buildings, structures, and facilities be accessible to, and usable by, persons with disabilities. Existing law establishes in the Department of General Services, the Division of the State Architect with responsibilities relating to architectural services, state buildings, and disability access. Existing law requires the State Architect to establish a certified access specialist program for voluntary certification by the state of any person who meets specified criteria as a certified access specialist. Existing law authorizes the State Architect to require applicants for certification and renewal of certification under the certified access specialist program to pay specified fees, including an application fee, a course fee, and an examination fee, at a level sufficient to meet the costs of administering the program, for deposit into the Certified Access Specialist Fund.

In administering the certified access specialist program, this bill would require the State Architect to periodically review its schedule of fees for certification under the program to ensure that the fees are not excessive. The bill would prohibit the State Architect from charging a California licensed architect, landscape architect, civil engineer, or structural engineer, an application fee for certification that exceeds \$250.

This bill would impose, on and after January 1, 2013, and until December 31, 2018, an additional state fee of \$1 on any applicant for a local business license or equivalent instrument or permit, or renewal thereof, for purposes of increasing disability access and compliance with construction-related accessibility requirements and developing educational resources for businesses to facilitate compliance with federal and state disability laws, as specified. The bill would divide those moneys for the state between the local entity that collected the moneys and the Division of the State Architect, pursuant to specified percentages. The bill would create

a continuously appropriated fund, the Disability Access and Education Revolving Fund, for the deposit of funds to be transferred to the Division of the State Architect, thereby making an appropriation. The bill would make an appropriation by authorizing local government entities to retain 70% of the fees imposed.

By adding to the duties of a local entity, this bill would impose a state-mandated local program.

(6) Existing law establishes the California Commission on Disability Access for purposes of developing recommendations to enable persons with disabilities to exercise their right to full and equal access to public facilities and facilitating business compliance with the laws and regulations to avoid unnecessary litigation. Existing law sets forth the powers and duties of the commission, as specified. Existing law requires the commission to study and make reports to the Legislature regarding disability access laws and compliance, as specified. Existing law requires the commission to act as an information center on the status of compliance with disability access laws, to publish a biennial report, and to coordinate with other state agencies and local building departments to ensure the uniformity of information provided to the public on disability access.

This bill would revise and recast those duties and powers, as specified, and eliminate the biennial reporting requirement. The bill would instead provide that a priority of the commission shall be the development and dissemination of educational materials and information to promote and facilitate disability access compliance, including a requirement that the commission work with the Division of the State Architect and the Department of Rehabilitation to develop educational materials for use by businesses. The bill would require the commission to post specified information on its Internet Web site, including, but not limited to, educational materials and information that will assist business owners. The bill would require the commission to report to the Legislature on its implementation by a specified date. The bill would require the commission to compile data with respect to any demand letter or complaint sent to the commission and post that information on its Internet Web site.

(7) Existing law, the California Building Standards Law, requires a state agency responsible for the adoption of building standards

to submit its standards to the California Building Standards Commission for review and approval, subject to specified procedures and a triennial code adoption cycle. Existing law requires the commission to codify and publish approved standards in the California Building Code, as set forth in Title 24 of the California Code of Regulations. Existing law provides that building standards become effective 180 days after its publication, as specified.

This bill would provide, for the purpose of an alleged violation of a construction-related accessibility standard, that upon publication of the 2013 California Building Standards Code, but prior to its effective date, as specified, compliance with the building standards for disabled accessibility in the 2013 California Building Standards Code is authorized as an alternative method of compliance.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(9) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 6106.2 of the Business and Professions Code is amended to read:

6106.2. (a) It shall constitute cause for the imposition of discipline of an attorney within the meaning of this chapter for an attorney to engage in any conduct in violation of Section 55.3 of the Civil Code.

(b) Commencing January 1, 2013, it shall constitute cause for the imposition of discipline of an attorney within the meaning of this chapter for an attorney to engage in any conduct in violation of subdivision (b) or (c) of Section 55.31, or paragraph (3) of subdivision (a) or subdivision (b) of Section 55.32 of the Civil

Code, or paragraph (2) of subdivision (a) of Section 55.32 of the Civil Code as provided in subdivision (c) of that section.

(c) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 2. Section 6106.2 is added to the Business and Professions Code, to read:

6106.2. (a) It shall constitute cause for the imposition of discipline of an attorney within the meaning of this chapter for an attorney to engage in any conduct in violation of Section 55.3, subdivision (b) or (c) of Section 55.31, or paragraph (2) of subdivision (a) or subdivision (b) of Section 55.32 of the Civil Code.

(b) This section shall become operative on January 1, 2016.

SEC. 3. Section 55.3 of the Civil Code is amended to read:

55.3. (a) For purposes of this section, the following shall apply:

(1) “Complaint” means a civil complaint that is filed or is to be filed with a court and is sent to or served upon a defendant on the basis of one or more construction-related accessibility claims, as defined in this section.

(2) “Construction-related accessibility claim” means any claim of a violation of any construction-related accessibility standard, as defined by paragraph (6) of subdivision (a) of Section 55.52, with respect to a place of public accommodation. “Construction-related accessibility claim” does not include a claim of interference with housing within the meaning of paragraph (2) of subdivision (b) of Section 54.1, or any claim of interference caused by something other than the construction-related accessibility condition of the property, including, but not limited to, the conduct of any person.

(3) “Demand for money” means a prelitigation written document or oral statement that is provided or issued to a building owner or tenant, or the owner’s or tenant’s agent or employee, that does all of the following:

(A) Alleges that the site is in violation of one or more construction-related accessibility standards, as defined in paragraph (6) of subdivision (a) of Section 55.52, or alleges one or more construction-related accessibility claims, as defined in paragraph (2).

(B) Contains or makes a request or demand for money or an offer or agreement to accept money.

(C) Is provided or issued whether or not the attorney intends to file a complaint, or eventually files a complaint, in state or federal court.

(4) “Demand letter” means a prelitigation written document that is provided to a building owner or tenant, or the owner’s or tenant’s agent or employee, that alleges the site is in violation of one or more construction-related accessibility standards, as defined in paragraph (6) of subdivision (a) of Section 55.52, or alleges one or more construction-related accessibility claims, as defined in paragraph (2), and is provided whether or not the attorney intends to file a complaint, or eventually files a complaint, in state or federal court.

(b) An attorney shall provide a written advisory on the form described in subdivision (c), or, until that form is available, on a separate page or pages that are clearly distinguishable from the demand letter or complaint, with each demand letter or complaint sent to or served upon a defendant or potential defendant. The advisory shall not be required in subsequent communications following the initial demand letter or initial complaint unless a new construction-related accessibility claim is asserted in the subsequent demand letter or amended complaint. The advisory shall state as follows:

**STATE LAW REQUIRES THAT YOU GET THIS  
IMPORTANT ADVISORY INFORMATION FOR BUILDING  
OWNERS AND TENANTS**

This information is available in English, Spanish, Chinese, Vietnamese, and Korean through the Judicial Council of California. Persons with visual impairments can get assistance in viewing this form through the Judicial Council Internet Web site at [www.courts.ca.gov](http://www.courts.ca.gov).

California law requires that you receive this information because the demand letter or court complaint you received with this document claims that your building or property does not comply with one or more existing construction-related accessibility laws or regulations protecting the civil rights of persons with disabilities to access public places.

**YOU HAVE IMPORTANT LEGAL OBLIGATIONS.** Compliance with disability access laws is a serious and significant responsibility that applies to all California building owners and tenants with buildings open for business to the public. You may obtain information about your legal obligations and how to comply with disability access laws through the Division of the State Architect at [www.dgs.ca.gov](http://www.dgs.ca.gov). Information is also available from the California Commission on Disability Access at [www.ccda.ca.gov/guide.htm](http://www.ccda.ca.gov/guide.htm).

**YOU HAVE IMPORTANT LEGAL RIGHTS.** The allegations made in the accompanying demand letter or court complaint do not mean that you are required to pay any money unless and until a court finds you liable. Moreover, **RECEIPT OF A DEMAND LETTER OR COURT COMPLAINT AND THIS ADVISORY DOES NOT NECESSARILY MEAN YOU WILL BE FOUND LIABLE FOR ANYTHING.** You will have the right if you are later sued to fully present your explanation why you believe you have not in fact violated disability access laws or have corrected the violation or violations giving rise to the claim.

You have the right to seek assistance or advice about this demand letter or court complaint from any person of your choice. If you have insurance, you may also wish to contact your insurance provider. Your best interest may be served by seeking legal advice or representation from an attorney, but you may also represent yourself and file the necessary court papers to protect your interests if you are served with a court complaint. If you have hired an attorney to represent you, you should immediately notify your attorney.

If a court complaint has been served on you, you will get a separate advisory notice with the complaint advising you of special options and procedures available to you under certain conditions.

**ADDITIONAL THINGS YOU SHOULD KNOW:** If the document accompanying this notice is a demand letter from a lawyer and not a formal court complaint, the lawyer is generally required by law to also provide a copy of it to the State Bar of California, until January 1, 2016, in order that the State Bar may determine whether the demand letter complies with legal requirements, **INCLUDING THAT THE DEMAND LETTER MAY NOT MAKE A REQUEST OR DEMAND FOR MONEY OR AN OFFER OR AGREEMENT TO ACCEPT MONEY.** Any

demand letter or court complaint must list the lawyer's State Bar license number on the document.

You are encouraged, but are not required, to provide the State Bar with a copy of the demand letter so the State Bar is aware that you received this demand letter and may determine whether it is in compliance with specified legal requirements. A copy of the letter can be sent to the State Bar by facsimile transmission to 1-415-538-2171, or by mail to the State Bar of California, 180 Howard Street, San Francisco, CA, 94105, Attention: Professional Competence.

(c) On or before July 1, 2013, the Judicial Council shall update the form that may be used by attorneys to comply with the requirements of subdivision (b). The form shall be in substantially the same format and include all of the text set forth in subdivision (b). The form shall be available in English, Spanish, Chinese, Vietnamese, and Korean, and shall include a statement that the form is available in additional languages, and the Judicial Council Internet Web site address where the different versions of the form may be located. The form shall include Internet Web site information for the Division of the State Architect and the California Commission on Disability Access.

(d) Subdivision (b) shall apply only to a demand letter or complaint made by an attorney. Nothing in this section is intended to affect the right to file a civil complaint under any other law or regulation protecting the physical access rights of persons with disabilities. Additionally, nothing in this section requires a party to provide or send a demand letter to another party before proceeding against that party with a civil complaint.

(e) This section shall not apply to any action brought by the Attorney General, or by any district attorney, city attorney, or county counsel.

SEC. 4. Section 55.31 is added to the Civil Code, to read:

55.31. (a) Commencing January 1, 2013, a demand letter alleging a construction-related accessibility claim, as defined in subdivision (a) of Section 55.3, shall state facts sufficient to allow a reasonable person to identify the basis of the violation or violations supporting the claim, including all of the following:

(1) A plain language explanation of the specific access barrier or barriers the individual encountered, or by which the individual

alleges he or she was deterred, with sufficient information about the location of the barrier to enable a reasonable person to identify the access barrier.

(2) The way in which the barrier encountered interfered with the individual's full and equal use or access, or in which it deterred the individual, on each particular occasion.

(3) The date or dates of each particular occasion on which the individual encountered the specific access barrier, or on which he or she was deterred.

(b) A demand letter may offer prelitigation settlement negotiations, but shall not include a request or demand for money or an offer or agreement to accept money.

(1) With respect to potential monetary damages for an alleged construction-related accessibility claim or claims, a demand letter shall not state any specific potential monetary liability for any asserted claim or claims, and may only state: "The property owner or tenant, or both, may be civilly liable for actual and statutory damages for a violation of a construction-related accessibility requirement."

(2) Notwithstanding any other law, a demand letter meeting the requirements of this section shall be deemed to satisfy the requirements for prelitigation notice of a potential claim when prelitigation notice is required by statute or common law for an award of attorney's fees.

(3) This subdivision and subdivision (a) do not apply to a demand for money, which is governed by subdivision (c).

(c) An attorney, or a person acting at the direction of an attorney, shall not issue a demand for money as defined in subdivision (a) of Section 55.3. This subdivision does not apply to a demand letter as defined in subdivision (a) of Section 55.3.

(d) (1) A violation of subdivision (b) or (c) constitutes cause for the imposition of discipline of an attorney. Subdivisions (b) and (c) do not prohibit an attorney from presenting a settlement figure or specification of damages in response to a request from the building owner or tenant, or the owner's or tenant's authorized agent or employee, following a demand letter provided pursuant to Section 55.3.

(2) Any liability for a violation of subdivision (c) is as provided in paragraph (1) of this subdivision. A violation of subdivision (c) does not create a new cause of action.

(e) Subdivision (c) does not prohibit any prelitigation settlement discussion of liability for damages and attorney's fees that occurs after a written or oral agreement is reached between the parties for the repair or correction of the alleged violation or violations of a construction-related accessibility standard.

(f) Subdivision (c) shall not apply to a claim involving physical injury and resulting special damages, but a demand for money relating to that claim that is sent shall otherwise comply with the requirements of subdivision (a) and Section 55.32.

(g) Nothing in this section shall apply to a demand or statement of alleged damages made in a prelitigation claim presented to a governmental entity as required by state or federal law, including, but not limited to, claims made under Part 3 (commencing with Section 900) of Division 3.6 of the Government Code.

(h) If subdivision (c) is not operative or becomes inoperative for any reason, the requirements of subdivision (a) and Section 55.32 shall apply to any written demand for money.

SEC. 5. Section 55.32 is added to the Civil Code, to read:

55.32. (a) An attorney who provides a demand letter, as defined in subdivision (a) of Section 55.3, shall do all of the following:

(1) Include the attorney's State Bar license number in the demand letter.

(2) Contemporaneously with providing the demand letter, send a copy of the demand letter to the State Bar of California by facsimile transmission at 1-415-538-2171, or by mail to 180 Howard Street, San Francisco, CA, 94105, Attention: Professional Competence.

(3) Within five business days of providing the demand letter, send a copy of the demand letter to the California Commission on Disability Access.

(b) An attorney who sends or serves a complaint, as defined in subdivision (a) of Section 55.3, shall send a copy of the complaint to the California Commission on Disability Access within five business days of sending or serving the complaint.

(c) A violation of paragraph (2) or (3) of subdivision (a) or subdivision (b) shall constitute cause for the imposition of discipline of an attorney where a copy of the complaint or demand letter is not sent to the California Commission on Disability Access within five business days, or a copy of the demand letter is not sent to the State Bar within five business days. In the event the

State Bar receives information indicating that an attorney has failed to send a copy of the complaint or demand letter to the California Commission on Disability Access within five business days, the State Bar shall investigate to determine whether paragraph (3) of subdivision (a) or subdivision (b) has been violated.

(d) Notwithstanding subdivisions (a) and (b), an attorney is not required to send to the State Bar of California or the California Commission on Disability Access a copy of any subsequent demand letter or amended complaint in the same dispute following the initial demand letter or complaint, unless that subsequent demand letter or amended complaint alleges a new construction-related accessibility claim.

(e) A demand letter or complaint sent to the California Commission on Disability Access shall be for the informational purposes of Section 8299.08 of the Government Code. A demand letter received by the State Bar from either the sender or recipient of the demand letter shall be reviewed by the State Bar to determine whether subdivision (b) or (c) of Section 55.31 has been violated.

(f) (1) Commencing July 31, 2013, and annually each July 31 thereafter, the State Bar shall report to the Legislature and the Chairs of the Senate and Assembly Committees on Judiciary, both of the following with respect to demand letters received by the State Bar:

(A) The number of investigations opened to date on a suspected violation of subdivision (b) or (c) of Section 55.31.

(B) Whether any disciplinary action resulted from the investigation, and the results of that disciplinary action.

(2) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(g) The California Commission on Disability Access shall review and report on the demand letters and complaints it receives as provided in Section 8299.08 of the Government Code.

(h) Paragraphs (2) and (3) of subdivision (a) and subdivision (b) shall not apply to a demand letter or complaint sent or filed by an attorney employed or retained by a qualified legal services project or a qualified support center, as defined in Section 6213 of the Business and Professions Code, when acting within the scope of employment in asserting a construction-related accessibility claim. The Legislature finds and declares that qualified

legal services projects and support centers are extensively regulated by the State Bar of California, and that there is no evidence of any abusive use of demand letters or complaints by these organizations. The Legislature further finds that, in light of the evidence of the extraordinarily small number of construction-related accessibility cases brought by regulated legal services programs, and given the resources of those programs, exempting regulated legal services programs from the requirements of this section to report to the California Commission on Disability Access will not affect the purpose of the reporting to, and tabulation by, the commission of all other construction-related accessibility claims.

(i) This section shall become operative on January 1, 2013.

(j) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 6. Section 55.32 is added to the Civil Code, to read:

55.32. (a) An attorney who provides a demand letter, as defined in subdivision (a) of Section 55.3, shall do all of the following:

(1) Include the attorney's State Bar license number in the demand letter.

(2) Within five business days of providing the demand letter, send a copy of the demand letter to the California Commission on Disability Access.

(b) An attorney who sends or serves a complaint, as defined in subdivision (a) of Section 55.3, shall send a copy of the complaint to the California Commission on Disability Access within five business days of sending or serving the complaint.

(c) A violation of paragraph (2) of subdivision (a) or subdivision (b) shall constitute cause for the imposition of discipline of an attorney if a copy of the demand letter or complaint is not sent to the California Commission on Disability Access within five business days. In the event the State Bar receives information indicating that an attorney has failed to send a copy of the demand letter or complaint to the California Commission on Disability Access within five business days, the State Bar shall investigate to determine whether paragraph (2) of subdivision (a) or subdivision (b) has been violated.

(d) Notwithstanding subdivisions (a) and (b), an attorney is not required to send to the California Commission on Disability Access a copy of any subsequent demand letter or amended complaint in

the same dispute following the initial demand letter or complaint, unless that subsequent demand letter or amended complaint alleges a new construction-related accessibility claim.

(e) A demand letter sent to the California Commission on Disability Access shall be for the informational purposes of Section 8299.08 of the Government Code. A demand letter received by the State Bar from the recipient of the demand letter shall be reviewed by the State Bar to determine whether subdivision (b) or (c) of Section 55.31 has been violated.

(f) (1) Notwithstanding Section 10231.5 of the Government Code, on or before July 31, 2016, and annually thereafter, the State Bar shall report to the Legislature and the Chairs of the Senate and Assembly Judiciary Committees, both of the following with respect to demand letters received by the State Bar:

(A) The number of investigations opened to date on a suspected violation of subdivision (b) or (c) of Section 55.31.

(B) Whether any disciplinary action resulted from the investigation, and the results of that disciplinary action.

(2) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(g) The California Commission on Disability Access shall review and report on the demand letters and complaints it receives as provided in Section 8299.08 of the Government Code.

(h) The expiration of any ground for discipline of an attorney shall not affect the imposition of discipline for any act prior to the expiration. An act or omission that constituted cause for imposition of discipline of an attorney when committed or omitted prior to January 1, 2016, shall continue to constitute cause for the imposition of discipline of that attorney on and after January 1, 2016.

(i) Paragraph (2) of subdivision (a) and subdivision (b) shall not apply to a demand letter or complaint sent or filed by an attorney employed or retained by a qualified legal services project or a qualified support center, as defined in Section 6213 of the Business and Professions Code, when acting within the scope of employment in asserting a construction-related accessibility claim. The Legislature finds and declares that qualified legal services projects and support centers are extensively regulated by the State Bar of California, and that there is no evidence of any abusive use

of demand letters or complaints by these organizations. The Legislature further finds that, in light of the evidence of the extraordinarily small number of construction-related accessibility cases brought by regulated legal services programs, and given the resources of those programs, exempting regulated legal services programs from the requirements of this section to report to the California Commission on Disability Access will not affect the purpose of the reporting to, and tabulation by, the commission of all other construction-related accessibility claims.

(j) This section shall become operative on January 1, 2016.

SEC. 7. Section 55.52 of the Civil Code is amended to read:

55.52. (a) For purposes of this part, the following definitions apply:

(1) “Construction-related accessibility claim” means any civil claim in a civil action with respect to a place of public accommodation, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55, based wholly or in part on an alleged violation of any construction-related accessibility standard, as defined in paragraph (6).

(2) “Application for stay and early evaluation conference” means an application to be filed with the court that meets the requirements of subdivision (c) of Section 55.54.

(3) “Certified access specialist” or “CASp” means any person who has been certified pursuant to Section 4459.5 of the Government Code.

(4) “Meets applicable standards” means the site was inspected by a CASp and determined to meet all applicable construction-related accessibility standards pursuant to paragraph (1) of subdivision (a) of Section 55.53. A site that is “CASp inspected” on or before the effective date of the amendments made to this section by Senate Bill 1186 of the 2011–12 Regular Session of the Legislature means that the site “meets applicable standards.”

(5) “Inspected by a CASp” means the site was inspected by a CASp and is pending a determination by the CASp that the site meets applicable construction-related accessibility standards pursuant to paragraph (2) of subdivision (a) of Section 55.53. A site that is “CASp determination pending” on or before the effective date of the amendments made to this section by Senate Bill 1186 of the 2011–12 Regular Session of the Legislature means that the site was “inspected by a CASp.”

(6) “Construction-related accessibility standard” means a provision, standard, or regulation under state or federal law requiring compliance with standards for making new construction and existing facilities accessible to persons with disabilities, including, but not limited to, any provision, standard, or regulation set forth in Section 51, 54, 54.1, or 55 of this code, Section 19955.5 of the Health and Safety Code, the California Building Standards Code (Title 24 of the California Code of Regulations), the federal Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.), and the federal Americans with Disabilities Act Accessibility Guidelines (Appendix A to Part 36 of Title 28 of the Code of Federal Regulations).

(7) “Place of public accommodation” has the same meaning as “public accommodation,” as set forth in Section 12181(7) of Title 42 of the United States Code and the federal regulations adopted pursuant to that section.

(8) “Qualified defendant” means a defendant in an action that includes a construction-related accessibility claim that is asserted against a place of public accommodation that met the requirements of “meets applicable standards” or “inspected by a CASp” prior to the date the defendant was served with the summons and complaint in that action. To be a qualified defendant, the defendant is not required to have been the party who hired any CASp, so long as the basis of the alleged liability of the defendant is a construction-related accessibility claim. To determine whether a defendant is a qualified defendant, the court need not make a finding that the place of public accommodation complies with all applicable construction-related accessibility standards as a matter of law. The court need only determine that the place of public accommodation has a status of “meets applicable standards” or “inspected by a CASp.”

(9) “Site” means a place of public accommodation.

(b) Unless otherwise indicated, terms used in this part relating to civil procedure have the same meanings that those terms have in the Code of Civil Procedure.

SEC. 8. Section 55.53 of the Civil Code is amended to read:

55.53. (a) For purposes of this part, a certified access specialist shall, upon completion of the inspection of a site, comply with the following:

(1) For a meets applicable standards site, if the CASp determines the site meets all applicable construction-related accessibility standards, the CASp shall provide a written inspection report to the requesting party that includes both of the following:

(A) An identification and description of the inspected structures and areas of the site.

(B) A signed and dated statement that includes both of the following:

(i) A statement that, in the opinion of the CASp, the inspected structures and areas of the site meet construction-related accessibility standards. The statement shall clearly indicate whether the determination of the CASp includes an assessment of readily achievable barrier removal.

(ii) If corrections were made as a result of the CASp inspection, an itemized list of all corrections and dates of completion.

(2) For an inspected by a CASp site, if the CASp determines that corrections are needed to the site in order for the site to meet all applicable construction-related accessibility standards, the CASp shall provide a signed and dated written inspection report to the requesting party that includes all of the following:

(A) An identification and description of the inspected structures and areas of the site.

(B) A statement that, in the opinion of the CASp, the inspected structures and areas of the site need correction to meet construction-related accessibility standards. This statement shall clearly indicate whether the determination of the CASp includes an assessment of readily achievable barrier removal.

(C) An identification and description of the structures or areas of the site that need correction and the correction needed.

(D) A schedule of completion for each of the corrections within a reasonable timeframe.

(b) For purposes of this section, in determining whether the site meets applicable construction-related accessibility standards when there is a conflict or difference between a state and federal provision, standard, or regulation, the state provision, standard, or regulation shall apply unless the federal provision, standard, or regulation is more protective of accessibility rights.

(c) Every CASp who conducts an inspection of a place of public accommodation shall, upon completing the inspection of the site, provide the building owner or tenant who requested the inspection

with the following notice, which the State Architect shall make available as a form on the State Architect's Internet Web site:

NOTICE TO PRIVATE PROPERTY OWNER/TENANT:

YOU ARE ADVISED TO KEEP IN YOUR RECORDS ANY WRITTEN INSPECTION REPORT AND ANY OTHER DOCUMENTATION CONCERNING YOUR PROPERTY SITE THAT IS GIVEN TO YOU BY A CERTIFIED ACCESS SPECIALIST.

IF YOU BECOME A DEFENDANT IN A LAWSUIT THAT INCLUDES A CLAIM CONCERNING A SITE INSPECTED BY A CERTIFIED ACCESS SPECIALIST, YOU MAY BE ENTITLED TO A COURT STAY (AN ORDER TEMPORARILY STOPPING ANY LAWSUIT) OF THE CLAIM AND AN EARLY EVALUATION CONFERENCE.

IN ORDER TO REQUEST THE STAY AND EARLY EVALUATION CONFERENCE, YOU WILL NEED TO VERIFY THAT A CERTIFIED ACCESS SPECIALIST HAS INSPECTED THE SITE THAT IS THE SUBJECT OF THE CLAIM. YOU WILL ALSO BE REQUIRED TO PROVIDE THE COURT AND THE PLAINTIFF WITH THE COPY OF A WRITTEN INSPECTION REPORT BY THE CERTIFIED ACCESS SPECIALIST, AS SET FORTH IN CIVIL CODE SECTION 55.54. THE APPLICATION FORM AND INFORMATION ON HOW TO REQUEST A STAY AND EARLY EVALUATION CONFERENCE MAY BE OBTAINED AT [www.courts.ca.gov/selfhelp-start.htm](http://www.courts.ca.gov/selfhelp-start.htm).

YOU ARE ENTITLED TO REQUEST, FROM A CERTIFIED ACCESS SPECIALIST WHO HAS CONDUCTED AN INSPECTION OF YOUR PROPERTY, A WRITTEN INSPECTION REPORT AND OTHER DOCUMENTATION AS SET FORTH IN CIVIL CODE SECTION 55.53. YOU ARE ALSO ENTITLED TO REQUEST THE ISSUANCE OF A DISABILITY ACCESS INSPECTION CERTIFICATE, WHICH YOU MAY POST ON YOUR PROPERTY.

(d) (1) Commencing July 1, 2010, a local agency shall employ or retain at least one building inspector who is a certified access specialist. The certified access specialist shall provide consultation to the local agency, permit applicants, and members of the public

on compliance with state construction-related accessibility standards with respect to inspections of a place of public accommodation that relate to permitting, plan checks, or new construction, including, but not limited to, inspections relating to tenant improvements that may impact access. If a local agency employs or retains two or more certified access specialists to comply with this subdivision, at least one-half of the certified access specialists shall be building inspectors who are certified access specialists.

(2) Commencing January 1, 2014, a local agency shall employ or retain a sufficient number of building inspectors who are certified access specialists to conduct permitting and plan check services to review for compliance with state construction-related accessibility standards by a place of public accommodation with respect to new construction, including, but not limited to, projects relating to tenant improvements that may impact access. If a local agency employs or retains two or more certified access specialists to comply with this subdivision, at least one-half of the certified access specialists shall be building inspectors who are certified access specialists.

(3) If a permit applicant or member of the public requests consultation from a certified access specialist, the local agency may charge an amount limited to a reasonable hourly rate, an estimate of which shall be provided upon request in advance of the consultation. A local government may additionally charge or increase permitting, plan check, or inspection fees to the extent necessary to offset the costs of complying with this subdivision. Any revenues generated from an hourly or other charge or fee increase under this subdivision shall be used solely to offset the costs incurred to comply with this subdivision. A CASp inspection pursuant to subdivision (a) by a building inspector who is a certified access specialist shall be treated equally for legal and evidentiary purposes as an inspection conducted by a private CASp. Nothing in this subdivision shall preclude permit applicants or any other person with a legal interest in the property from retaining a private CASp at any time.

(e) (1) Every CASp who completes an inspection of a place of public accommodation shall, upon a determination that the site meets applicable standards pursuant to paragraph (1) of subdivision (a) or is inspected by a CASp pursuant to paragraph (2) of

subdivision (a), provide the building owner or tenant requesting the inspection with a numbered disability access inspection certificate indicating that the site has undergone inspection by a certified access specialist. The disability access inspection certificate shall be dated and signed by the CASp inspector, and shall contain the inspector's name and license number. Upon issuance of a certificate, the CASp shall record the issuance of the numbered certificate, the name and address of the recipient, and the type of report issued pursuant to subdivision (a) in a record book the CASp shall maintain for that purpose.

(2) Beginning March 1, 2009, the State Architect shall make available for purchase by any local building department or CASp sequentially numbered disability access inspection certificates that are printed with a watermark or other feature to deter forgery and that comply with the information requirements specified in subdivision (a).

(3) The disability access inspection certificate may be posted on the premises of the place of public accommodation, unless, following the date of inspection, the inspected site has been modified or construction has commenced to modify the inspected site in a way that may impact compliance with construction-related accessibility standards.

(f) Nothing in this section or any other law is intended to require a property owner or tenant to hire a CASp. A property owner's or tenant's election not to hire a CASp shall not be admissible to prove that person's lack of intent to comply with the law.

SEC. 9. Section 55.54 of the Civil Code is amended to read:

55.54. (a) (1) An attorney who causes a summons and complaint to be served in an action that includes a construction-related accessibility claim, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55, shall, at the same time, cause to be served a copy of the application form specified in subdivision (c) and a copy of the following notice, including, until January 1, 2013, the bracketed text, to the defendant on separate papers that shall be served with the summons and complaint:

#### ADVISORY NOTICE TO DEFENDANT

YOU MAY BE ENTITLED TO ASK FOR A COURT STAY (AN ORDER TEMPORARILY STOPPING ANY LAWSUIT) AND EARLY EVALUATION CONFERENCE IN THIS LAWSUIT AND MAY BE ASSESSED REDUCED STATUTORY DAMAGES IF YOU MEET CERTAIN CONDITIONS.

If the construction-related accessibility claim pertains to a site that has a Certified Access Specialist (CAsp) inspection report for that site, or to a site where new construction or improvement was approved after January 1, 2008, by the local building permit and inspection process, you may make an immediate request for a court stay and early evaluation conference in the construction-related accessibility claim by filing the attached application form with the court. You may be entitled to the court stay and early evaluation conference regarding the accessibility claim only if ALL of the statements in the application form applicable to you are true.

FURTHER, if you are a defendant described above (with a CAsp inspection report or with new construction after January 1, 2008), and, to the best of your knowledge, there have been no modifications or alterations completed or commenced since the CAsp report or building department approval of the new construction or improvement that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim, your liability for minimum statutory damages may be reduced to \$1,000 for each offense, unless the violation was intentional, and if all construction-related accessibility violations giving rise to the claim are corrected within 60 days of being served with this complaint.

IN ADDITION, if your business is a small business that, over the previous three years, or the existence of the business if less than three years, employs 25 or fewer employees on average over that time period and meets specified gross receipts criteria, you may also be entitled to the court stay and early evaluation conference and your minimum statutory damages for each claim may be reduced to \$2,000 for each offense, unless the violation was intentional, and if all the alleged construction-related accessibility violations are corrected within 30 days of being served with the complaint.

If you plan to correct the violations giving rise to the claim, you should take pictures and measurements or similar action to document the condition of the physical barrier asserted to be the basis for a violation before undertaking any corrective action in case a court needs to see the condition of a barrier before it was corrected.

The court will schedule the conference to be held within 70 days after you file the attached application form.

[If you are not a defendant with a CASp inspection report, until a form is adopted by the Judicial Council, you may use the attached form if you modify the form and supplement it with your declaration stating any one of the following:

(1) Until January 1, 2018, that the site's new construction or improvement on or after January 1, 2008, and before January 1, 2016, was approved pursuant to the local building permit and inspection process; that, to the best of your knowledge, there have been no modifications or alterations completed or commenced since the building department approval that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim; and that all violations giving rise to the claim have been corrected, or will be corrected within 60 days of the complaint being served.

(2) That the site's new construction or improvement passed inspection by a local building department inspector who is a certified access specialist; that, to the best of your knowledge, there have been no modifications or alterations completed or commenced since that inspection approval that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim; and that all violations giving rise to the claim have been corrected, or will be corrected within 60 days of the complaint being served.

(3) That your business is a small business with 25 or fewer employees and meets the gross receipts criteria set out in Section 55.56 of the Civil Code, and that all violations giving rise to the claim have been corrected, or will be corrected within 30 days of being served with the complaint.]

The court will also issue an immediate stay of the proceedings unless the plaintiff has obtained a temporary restraining order in the construction-related accessibility claim. You may obtain a copy of the application form, filing

instructions, and additional information about the stay and early evaluation conference through the Judicial Council Internet Web site at [www.courts.ca.gov/selfhelp-start.htm](http://www.courts.ca.gov/selfhelp-start.htm).

You may file the application after you are served with a summons and complaint, but no later than your first court pleading or appearance in this case, which is due within 30 days after you receive the summons and complaint. If you do not file the application, you will still need to file your reply to the lawsuit within 30 days after you receive the summons and complaint to contest it. You may obtain more information about how to represent yourself and how to file a reply without hiring an attorney at [www.courts.ca.gov/selfhelp-start.htm](http://www.courts.ca.gov/selfhelp-start.htm).

You may file the application without the assistance of an attorney, but it may be in your best interest to immediately seek the assistance of an attorney experienced in disability access laws when you receive a summons and complaint. You may make an offer to settle the case, and it may be in your interest to put that offer in writing so that it may be considered under Section 55.55 of the Civil Code.

(2) An attorney who files a Notice of Substitution of Counsel to appear as counsel for a plaintiff who, acting in propria persona, had previously filed a complaint in an action that includes a construction-related accessibility claim, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55, shall, at the same time, cause to be served a copy of the application form specified in subdivision (c) and a copy of the notice specified in paragraph (1) upon the defendant on separate pages that shall be attached to the Notice of Substitution of Counsel.

(b) (1) Notwithstanding any other law, upon being served with a summons and complaint asserting a construction-related accessibility claim, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55, a qualified defendant, or other defendant as defined in paragraph (2), may file a request for a court stay and early evaluation conference in the proceedings of that claim prior to or simultaneous with that defendant's responsive pleading or other initial appearance in the action that includes the claim. If that defendant filed a timely request for stay and early evaluation conference before a responsive pleading was due, the period for filing a responsive pleading shall be tolled until the stay

is lifted. Any responsive pleading filed simultaneously with a request for stay and early evaluation conference may be amended without prejudice, and the period for filing that amendment shall be tolled until the stay is lifted.

(2) This subdivision shall also apply to a defendant if any of the following apply:

(A) Until January 1, 2018, the site's new construction or improvement on or after January 1, 2008, and before January 1, 2016, was approved pursuant to the local building permit and inspection process, and the defendant declares with the application that, to the best of the defendant's knowledge, there have been no modifications or alterations completed or commenced since that approval that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim, and that all violations have been corrected, or will be corrected within 60 days of being served with the complaint.

(B) The site's new construction or improvement was approved by a local public building department inspector who is a certified access specialist, and the defendant declares with the application that, to the best of the defendant's knowledge, there have been no modifications or alterations completed or commenced since that approval that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim, and that all violations have been corrected, or will be corrected within 60 days of being served with the complaint.

(C) The defendant is a small business described in subdivision (f) of Section 55.56, and the defendant declares with the application that all violations have been corrected, or will be corrected within 30 days of being served with the complaint.

(3) Notwithstanding any other law, if the plaintiff had acted in propria persona in filing a complaint that includes a construction-related accessibility claim, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55, a qualified defendant, or a defendant described by paragraph (2), who is served with a Notice of Substitution of Counsel shall have 30 days to file an application for a stay and an early evaluation conference. The application may be filed prior to or after the defendant's filing of a responsive pleading or other initial appearance in the action that includes the claim, except that an application may not be filed in

a claim in which an early evaluation conference or settlement conference has already been held on the claim.

(c) (1) An application for an early evaluation conference and stay by a qualified defendant shall include a signed declaration that states both of the following:

(A) The site identified in the complaint has been CASp-inspected or meets applicable standards, or is CASp determination pending or has been inspected by a CASp, and if the site is CASp-inspected or meets applicable standards, there have been no modifications completed or commenced since the date of inspection that may impact compliance with construction-related accessibility standards to the best of the defendant's knowledge.

(B) An inspection report pertaining to the site has been issued by a CASp. The inspection report shall be provided to the court and the plaintiff at least 15 days prior to the court date set for the early evaluation conference.

(2) An application for an early evaluation conference and stay by a defendant described by subparagraph (A) of paragraph (2) of subdivision (b), which may be filed until January 1, 2018, shall include a signed declaration that states all of the following:

(A) The site's new construction or improvement was approved pursuant to the local building permit and inspection process on or after January 1, 2008, and before January 1, 2016.

(B) To the best of the defendant's knowledge there have been no modifications or alterations completed or commenced since that approval that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim.

(C) All construction-related violations giving rise to the claim have been corrected, or will be corrected within 60 days of the complaint being served upon the defendant.

(3) An application for an early evaluation conference and stay by a defendant described in subparagraph (B) of paragraph (2) of subdivision (b) shall include a signed declaration that states all of the following:

(A) The site's new construction or improvement was approved by a local building department inspector who is a certified access specialist.

(B) To the best of the defendant's knowledge there have been no modifications or alterations completed or commenced since

that approval that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim.

(C) All construction related violations giving rise to the claim have been corrected, or will be corrected within 60 days of the complaint being served upon the defendant.

(4) An application for an early evaluation conference and stay by a defendant described by subparagraph (C) of paragraph (2) of subdivision (b) shall include the materials listed in paragraphs (5) and (6) of this subdivision, and shall include a signed declaration that states both of the following:

(A) The defendant is a small business that employs 25 or fewer employees and meets the gross receipts eligibility criteria provided in paragraph (2) of subdivision (f) of Section 55.56.

(B) All construction-related violations giving rise to the claim have been corrected, or will be corrected within 30 days of the complaint being served upon the defendant.

(5) An application for an early evaluation conference and stay by a small business defendant under paragraph (4) shall include evidence showing correction of all violations within 30 days of the service of the complaint and served upon the plaintiff with the reply unless the application is filed prior to completion of the corrections. In that event, the evidence shall be provided to the court and served upon the plaintiff within 10 days of the court order as provided in paragraph (4) of subdivision (d). This paragraph shall not be construed to extend the permissible time under subdivision (f) of Section 55.56 to make the corrections.

(6) An application for an early evaluation conference and stay by a small business defendant under paragraph (4) shall also include both of the following, which shall be confidential documents filed only with the court and not served upon or available to the plaintiff:

(A) Proof of the defendant's number of employees, as shown by wage report forms filed with the Employment Development Department.

(B) Proof of the defendant's average gross receipts for the previous three years, or for the existence of the business if less than three years, as shown by a federal or state tax document.

(7) The following provisional request and notice forms may be used and filed by a qualified defendant until forms are adopted by

the Judicial Council for those purposes pursuant to subdivision  
(l):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number if attorney, and address):  TELEPHONE NO.:                      FAX NO. (Optional):  E-MAIL ADDRESS (Optional):  ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____  STREET ADDRESS:  MAILING ADDRESS:  CITY AND ZIP CODE:  BRANCH NAME:	
PLAINTIFF:  DEFENDANT:	
<b>DEFENDANT'S APPLICATION FOR STAY AND EARLY EVALUATION CONFERENCE PURSUANT TO CIVIL CODE SECTION 55.54 (CONSTRUCTION-RELATED ACCESSIBILITY CLAIM)</b>	
CASE NUMBER:	

(Information about this application and the filing instructions may be obtained at [http:// www.courtinfo.ca.gov/selfhelp/](http://www.courtinfo.ca.gov/selfhelp/).)

- Defendant (name) \_\_\_\_\_ requests a stay of proceedings and early evaluation conference pursuant to Civil Code Section 55.54.
- The complaint in this case alleges a construction-related accessibility claim as defined under Civil Code Section 55.52(a)(1).
- The claim concerns a site that (check the box if the statement is true):
  - \_\_\_\_\_ Has been inspected by a Certified Access Specialist (CASp) and determined to be CASp inspected or CASp determination pending and, if CASp inspected, there have been no modifications completed or commenced since the date of inspection that may impact compliance with construction-related accessibility standards to the best of defendant's knowledge; and
  - \_\_\_\_\_ An inspection report by a Certified Access Specialist (CASp) relating to the site has been issued.  
(Both (a) and (b) must be met for the court to order a Stay and Early Evaluation Conference.)
- I am requesting the court to:
  - Stay the proceedings relating to the construction-related accessibility claim.
  - Schedule an Early Evaluation Conference.
  - Order Defendant to file a confidential copy of the Certified Access Specialist (CASp) report with the court and serve a copy of the report on the Plaintiff at least fifteen (15) days before the Early Evaluation Conference date.
  - Order Plaintiff to file the statement required by Civil Code Section 55.54(d)(6)(A)–(D) with the court and serve a copy of the statement on the Defendant at least fifteen (15) days before the date of the Early Evaluation Conference.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME OF DECLARANT)

\_\_\_\_\_  
(SIGNATURE OF DECLARANT)

\_\_\_\_\_  
(TITLE OF DECLARANT)

**DEFENDANT'S APPLICATION FOR EARLY EVALUATION CONFERENCE AND STAY OF PROCEEDINGS**  
(Construction-related Accessibility Claim)                      Provisional Form

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number if attorney, and address):   TELEPHONE NO.:                      FAX NO. (Optional):  E-MAIL ADDRESS (Optional):  ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____  STREET ADDRESS:  MAILING ADDRESS:  CITY AND ZIP CODE:  BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
<b>NOTICE OF STAY OR PROCEEDINGS AND EARLY EVALUATION CONFERENCE (CONSTRUCTION-RELATED ACCESSIBILITY CLAIM)</b>	<b>CASE NUMBER:</b>

### Stay of Proceedings

For a period of 90 days from the date of the filing of this court notice, unless otherwise ordered by the court, the parties are stayed from taking any further action relating to the construction-related accessibility claim or claims in this case.

This stay does not apply to any construction-related accessibility claim in which the plaintiff has obtained temporary injunctive relief which is still in place.

### Notice of Early Evaluation Conference

1. This action includes a construction-related accessibility claim under Civil Code Section 55.52(a)(1) or other provision of law.
2. A defendant has requested an early evaluation conference and a stay of proceedings under Civil Code Section 55.54.
3. The early evaluation conference is scheduled as follows:
  - a. Date:                      Time:                      Dept.                      Room:
  - b. The conference will be held at \_\_\_\_\_ the court address shown above, or \_\_\_\_\_ at:
4. The plaintiff and defendant shall attend with any other person needed for settlement of the case unless, with court approval, a party's disability requires the party's participation by a telephone appearance or other alternate means or through the personal appearance of an authorized representative.
5. The defendant that requested the conference and stay of proceedings must file with the court and serve on all parties a copy of the CASp report for the site that is the subject of the construction-related accessibility claim at least fifteen (15) days before the date set for the early evaluation conference. The CASp report is confidential and only available as set forth below and in Civil Code Section 55.54(d)(4).
6. The CASp report shall be marked "CONFIDENTIAL" and may be disclosed only to counsel, the parties to the action, the parties' attorneys, those individuals employed or retained by the attorneys to assist in the litigation, and insurance representatives or others involved in the evaluation and settlement of the case.
7. The plaintiff shall file with the court and serve on all parties at least fifteen (15) days before the date set for the early evaluation conference a statement of, to the extent known, all of the following:
  - a. An itemized list of specific issues on the subject premises that are the basis of the claimed construction-related accessibility violations in the plaintiff's complaint;
  - b. The amount of damages claimed;
  - c. The amount of attorney's fees and costs incurred to date, if any, that are being claimed; and
  - d. Any demand for settlement of the case in its entirety.

8. A copy of this Notice and Order and the Defendant's Application shall be served on the plaintiff or plaintiff's attorney by hand delivering it or mailing it to the address listed on the complaint on the same date that the court issues this Notice and Order of Stay of Proceedings and Early Evaluation Conference.

Date:

Clerk, by \_\_\_\_\_, Deputy

More information about this Notice and Order and the defendant's application, and instructions to assist plaintiff and defendants in complying with this Notice and Order, may be obtained at <http://www.courtinfo.ca.gov/selfhelp/>.

### Requests for Accommodation

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the date on which you are to appear. Contact the clerk's office or go to [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) for Request for Accommodations by Persons with Disabilities and Order (form MC-410). (Civil Code Section 54.8)

### Proof of Service

(Required from Defendant Filing Application for Stay and Early Evaluation Conference)

I served a copy of the defendant's Application For Stay and Early Evaluation Conference Pursuant To Civil Code Section 55.54 and the court Notice and Order of Stay of Proceedings and Early Evaluation Conference (check one):

\_\_\_\_\_ On the Plaintiff's attorney

\_\_\_\_\_ On the Plaintiff who is not represented by an attorney

By hand delivering it or mailing it to the address listed on the complaint on the day the court issued this Notice and Order of Stay of Proceedings and Early Evaluation Conference.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address of named person

(8) The provisional forms and any replacement Judicial Council forms shall include the defendant's declaration of proof of service of the application, the notice of the court's order, and the court's order pursuant to subdivision (d).

(d) Upon the filing of an application for stay and early evaluation conference by a qualified defendant, or a defendant described by paragraph (2) of subdivision (b), the court shall immediately issue an order that does all of the following:

(1) Grants a 90-day stay of the proceedings with respect to the construction-related accessibility claim, unless the plaintiff has obtained temporary injunctive relief that is still in place for the construction-related accessibility claim.

(2) Schedules a mandatory early evaluation conference for a date as soon as possible from the date of the order, but in no event later than 70 days after issuance of the order, and in no event earlier than 50 days after the filing of the request.

(3) Directs the parties, and any other person whose authority is required to negotiate and enter into settlement, to appear in person at the time set for the conference. Appearance by counsel shall not satisfy the requirement that the parties or those with negotiation and settlement authority personally appear, provided, however, that the court may allow a party who is unable to attend in person due to his or her disability to participate in the hearing by telephone or other alternative means or through a representative authorized to settle the case.

(4) (A) Directs the qualified defendant to file with the court and serve on the plaintiff a copy of any relevant CASp inspection report at least 15 days before the date of the conference. The CASp inspection report is confidential and is available only as set forth in paragraph (5) of this subdivision and in paragraph (4) of subdivision (e).

(B) Directs a defendant described by subparagraph (A) or (B) of paragraph (2) of subdivision (b) who has filed a declaration stating that the violation or violations have been corrected, or will be corrected within 60 days of service of the complaint to file with the court and serve on the plaintiff evidence showing correction of the violation or violations within 10 calendar days after the completion of the corrections.

(C) Directs a defendant described by subparagraph (C) of paragraph (2) of subdivision (b) who has filed a declaration stating

that the violation or violations have been corrected, or will be corrected within 30 days of service of the complaint to file with the court and serve on the plaintiff within 10 days after issuance of the court order evidence of correction of the violation or violations, if that evidence showing correction was not filed previously with the application and served on the plaintiff.

(5) Directs the parties that the CASp inspection report may be disclosed only to the court, the parties to the action, the parties' attorneys, those individuals employed or retained by the attorneys to assist in the litigation, and insurance representatives or others involved in the evaluation and settlement of the case.

(6) Directs the plaintiff to file with the court and serve on the defendant at least 15 days before the date of the conference a statement that includes, to the extent reasonably known, for use solely for the purpose of the early evaluation conference, all of the following:

(A) An itemized list of specific conditions on the subject premises that are the basis of the claimed violations of construction-related accessibility standards in the plaintiff's complaint.

(B) The amount of damages claimed.

(C) The amount of attorney's fees and costs incurred to date, if any, that are being claimed.

(D) Any demand for settlement of the case in its entirety.

(e) (1) A party failing to comply with any court order may be subject to court sanction at the court's discretion.

(2) (A) The court shall lift the stay when the defendant has failed to file and serve the CASp inspection report prior to the early evaluation conference and has failed also to produce the report at the time of the early evaluation conference, unless the defendant shows good cause for that failure.

(B) The court shall lift the stay when a defendant described by paragraph (2) of subdivision (b) has failed to file and serve the evidence showing correction of the violation or violations as required by law.

(3) The court may lift the stay at the conclusion of the early evaluation conference upon a showing of good cause by the plaintiff. Good cause may include the defendant's failure to make reasonably timely progress toward completion of corrections noted by a CASp.

(4) The CASp inspection report filed and served pursuant to subdivision (d) shall remain confidential throughout the stay and shall continue to be confidential until the conclusion of the claim, whether by dismissal, settlement, or final judgment, unless there is a showing of good cause by any party. Good cause may include the defendant's failure to make reasonably timely progress toward completion of corrections noted by a CASp. The confidentiality of the inspection report shall terminate upon the conclusion of the claim, unless the owner of the report obtains a court order pursuant to the California Rules of Court to seal the record.

(f) All discussions at the early evaluation conference shall be subject to Section 1152 of the Evidence Code. It is the intent of the Legislature that the purpose of the evaluation conference shall include, but not be limited to, evaluation of all of the following, as applicable:

(1) Whether the defendant is entitled to the 90-day stay for some or all of the identified issues in the case, as a qualified defendant.

(2) The current condition of the site and the status of any plan of corrections, including whether the qualified defendant has corrected or is willing to correct the alleged violations, and the timeline for doing so.

(3) Whether subdivision (f) of Section 55.56 may be applicable to the case, and whether all violations giving rise to the claim have been corrected within the specified time periods.

(4) Whether the case, including any claim for damages or injunctive relief, can be settled in whole or in part.

(5) Whether the parties should share other information that may facilitate early evaluation and resolution of the dispute.

(g) Nothing in this section precludes any party from making an offer to compromise pursuant to Section 998 of the Code of Civil Procedure.

(h) For a claim involving a qualified defendant, as provided in paragraph (1) of subdivision (b), the court may schedule additional conferences and may extend the 90-day stay for good cause shown, but not to exceed one additional 90-day extension.

(i) Early evaluation conferences shall be conducted by a superior court judge or commissioner, or a court early evaluation conference officer. A commissioner shall not be qualified to conduct early evaluation conferences pursuant to this subdivision unless he or she has received training regarding disability access requirements

imposed by the federal Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.), state laws that govern access to public facilities, and federal and state regulations adopted pursuant to those laws. For purposes of this subdivision, a “court early evaluation conference officer” means an attorney employed by the court who has received training regarding disability access requirements imposed by the federal Americans with Disabilities Act of 1990, state laws that govern access to public facilities, and federal and state regulations adopted pursuant to those laws. Attorneys serving in this capacity may also be utilized by the court for other purposes not related to these proceedings.

(j) Nothing in this part shall be deemed to make any inspection report, opinion, statement, or other finding or conclusion of a CASp binding on the court, or to abrogate in any manner the ultimate authority of the court to make all appropriate findings of fact and law. The CASp inspection report and any opinion, statement, finding, or conclusion therein shall be given the weight the trier of fact finds that it deserves.

(k) Nothing in this part shall be construed to invalidate or limit any California construction-related accessibility standard that provides greater or equal protection for the rights of individuals with disabilities than is afforded by the federal Americans with Disabilities Act (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.) and the federal regulations adopted pursuant to that act.

(l) (1) The Judicial Council shall, by January 1, 2013, prepare and post on its Internet Web site instructions and a form for use by a qualified defendant, or other defendant described by paragraph (2) of subdivision (b), to file an application for stay and early evaluation conference as provided in subdivisions (b) and (c), a form for the court’s notice of stay and early evaluation conference, and any other forms appropriate to implement the provisions relating to early evaluation conferences. Until those forms are adopted, the Judicial Council shall post on its Internet Web site the provisional forms set forth in subdivision (c).

(2) Until the adoption of the forms as provided in paragraph (1), the provisional application form may be used by a defendant described by paragraph (2) of subdivision (b).

(3) In lieu of the provisions specified in number 3 of page 1 of the application form set forth in paragraph (7) of subdivision (c),

the application shall include one of the following declarations of the defendant as to the basis for the application, as follows:

(A) That all of the following apply to a defendant described by subparagraph (A) of paragraph (2) of subdivision (b):

(i) The site's new construction or improvement was approved pursuant to the local building permit and inspection process on or after January 1, 2008, and before January 1, 2016.

(ii) To the best of the defendant's knowledge there have been no modifications or alterations completed or commenced since that approval that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim.

(iii) All the violations giving rise to the claim have been corrected, or will be corrected within 60 days of the complaint being served.

(B) That all of the following apply to a defendant described by subparagraph (B) of paragraph (2) of subdivision (b):

(i) The site's new construction or improvement was approved by a local public building department inspector who is a certified access specialist.

(ii) To the best of the defendant's knowledge there have been no modifications or alterations completed or commenced since that approval that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim.

(iii) All the violations giving rise to the claim have been corrected, or will be corrected within 60 days of the complaint being served.

(C) That both of the following apply to a defendant described by subparagraph (C) of paragraph (2) of subdivision (b):

(i) The defendant is a small business described in paragraph (2) of subdivision (f) of Section 55.56.

(ii) The violation or violations giving rise to the claim have been corrected, or will be corrected within 30 days of the complaint being served.

(4) In lieu of the provision specified in number 4(c) of page 1 of the application form set forth in paragraph (7) of subdivision (c), the application shall include a request that the court order the defendant to do either of the following:

(A) For a defendant who has filed a declaration stating that all violations have been corrected, or will be corrected within 60 days of service of the complaint, file with the court and serve on the

plaintiff evidence showing correction of the violation or violations within 10 calendar days of the completion of the corrections.

(B) For a defendant who is a small business that has filed a declaration stating that all the violations have been corrected, or will be corrected within 30 days of the service of the complaint, file with the court and serve on the plaintiff evidence showing correction of the violation or violations within 10 calendar days after issuance of the court order, if that evidence showing correction was not filed previously with the application and served on the plaintiff.

(5) The Judicial Council shall also prepare and post on its Internet Web site instructions and cover pages to assist plaintiffs and defendants, respectively, to comply with their filing responsibilities under subdivision (d). The cover pages shall also provide for the party's declaration of proof of service of the pertinent document served under the court order.

(m) The stay provisions shall not apply to any construction-related accessibility claim in which the plaintiff has been granted temporary injunctive relief that remains in place.

(n) This section shall not apply to any action brought by the Attorney General, or by any district attorney, city attorney, or county counsel.

(o) The amendments to this section made by Senate Bill 1186 of the 2011–12 Regular Session of the Legislature shall apply only to claims filed on or after the operative date of that act. Nothing in this part is intended to affect any complaint filed before that date.

(p) Nothing in this part is intended to affect existing law regarding class action requirements.

SEC. 10. Section 55.545 is added to the Civil Code, to read:

55.545. (a) A defendant who does not qualify for an early evaluation conference pursuant Section 55.54, or who forgoes the provisions of Section 55.54, may request a mandatory evaluation conference. A plaintiff may, if the defendant does not make the request with the filing of the responsive pleadings, request a mandatory evaluation conference by filing an application within 15 days of the defendant's filing of responsive pleadings.

(b) Upon being served with a summons and complaint asserting a construction-related accessibility claim, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55, a defendant

may file an application for a mandatory evaluation conference in the proceedings of that claim simultaneous with the defendant's responsive pleading or other initial appearance in the action that includes the claim. Until the application form for the mandatory evaluation conference is developed by the Judicial Council and posted on its Internet Web site pursuant to subdivision (j), a defendant may request the calendaring of the mandatory evaluation conference in a separate application filed with the defendant's responsive pleadings.

(c) Upon the filing of a request or application for a mandatory evaluation conference by a defendant or plaintiff, the court shall schedule a mandatory evaluation conference for a date as soon as possible from the date of the request or application, but in no event later than 180 days after the date of request or application, or earlier than 120 days after the filing of the request or application. Upon mutual stipulation for an extension of the conference date, the mandatory evaluation conference may be extended for up to 30 days. The court's notice of conference shall also do all of the following:

(1) Direct the parties, and any other person whose authority is required to negotiate and enter into settlement, to appear in person at the time set for the conference. Appearance by counsel shall not satisfy the requirement that the parties, or those with negotiation and settlement authority, personally appear. However, the court may allow a party who is unable to attend in person due to his or her disability to participate in the hearing by telephone or other alternative means, or through a representative authorized to settle the case.

(2) Direct the plaintiff to file with the court and serve on the defendant, at least 30 days before the date of mandatory evaluation conference, a statement that includes, to the extent reasonably known, for use solely for the purpose of the mandatory evaluation conference, all of the following:

(A) An itemized list of specific conditions on the site that are the basis of the claimed violations of construction-related accessibility standards in the plaintiff's complaint.

(B) The amount of damages claimed.

(C) The amount of attorney's fees and costs incurred to date, if any, that are being claimed.

(D) Any demand for settlement of the case in its entirety.

(3) Direct the defendant to file with the court and serve on the plaintiff, at least 30 days before the date of the mandatory evaluation conference, a statement of the defendant detailing any remedial action or remedial correction plan undertaken, or to be undertaken, by the defendant to correct the alleged violations.

(d) A party failing to comply with any court order is subject to court sanction at the court's discretion.

(e) All discussions at the mandatory evaluation conference shall be subject to Section 1152 of the Evidence Code. It is the intent of the Legislature that the purpose of the evaluation conference shall include, but not be limited to, evaluation of all of the following:

(1) The current condition of the site and the status of any plan of correction, including whether the defendant has corrected, or is willing to correct, the alleged violations, and the timeline for doing so.

(2) Whether the case, including any claim for damages or injunctive relief, can be settled in whole or in part.

(3) Whether the parties should share other information that may facilitate evaluation and resolution of the dispute.

(f) Nothing in this section precludes any party from making an offer to compromise pursuant to Section 998 of the Code of Civil Procedure.

(g) The court may schedule additional conferences.

(h) Mandatory evaluation conferences shall be conducted by a superior court judge or commissioner, or by a court early evaluation conference officer as provided in subdivision (i) of Section 55.54.

(i) If an inspection report by a certified access specialist is offered by the defendant, the provisions of Section 55.54 relating to the use and confidentiality of that report shall apply.

(j) (1) The Judicial Council shall prepare and post on its Internet Web site instructions and a form for a party to use to file an application for a mandatory evaluation conference and a form for the court's notice of the mandatory evaluation conference. Until those forms are adopted, a party and the court may use an ad hoc form that complies with the requirements of this section.

(2) The Judicial Council shall also prepare and post on its Internet Web site instructions and cover pages to assist plaintiffs and defendants, respectively, to comply with their filing responsibilities under subdivision (c).

(k) The mandatory evaluation conference may, at the court's discretion, be scheduled or combined with the case management conference within the time period specified in subdivision (c).

(l) This section shall not apply to any action brought by the Attorney General, or by any district attorney, city attorney, or county counsel.

(m) This section shall apply only to claims filed on or after January 1, 2013. Nothing in this section is intended to affect any complaint filed before that date.

SEC. 11. Section 55.56 of the Civil Code is amended to read:

55.56. (a) Statutory damages under either subdivision (a) of Section 52 or subdivision (a) of Section 54.3 may be recovered in a construction-related accessibility claim against a place of public accommodation only if a violation or violations of one or more construction-related accessibility standards denied the plaintiff full and equal access to the place of public accommodation on a particular occasion.

(b) A plaintiff is denied full and equal access only if the plaintiff personally encountered the violation on a particular occasion, or the plaintiff was deterred from accessing a place of public accommodation on a particular occasion.

(c) A violation personally encountered by a plaintiff may be sufficient to cause a denial of full and equal access if the plaintiff experienced difficulty, discomfort, or embarrassment because of the violation.

(d) A plaintiff demonstrates that he or she was deterred from accessing a place of public accommodation on a particular occasion only if both of the following apply:

(1) The plaintiff had actual knowledge of a violation or violations that prevented or reasonably dissuaded the plaintiff from accessing a place of public accommodation that the plaintiff intended to use on a particular occasion.

(2) The violation or violations would have actually denied the plaintiff full and equal access if the plaintiff had accessed the place of public accommodation on that particular occasion.

(e) Statutory damages may be assessed pursuant to subdivision (a) based on each particular occasion that the plaintiff was denied full and equal access, and not upon the number of violations of construction-related accessibility standards identified at the place of public accommodation where the denial of full and equal access

occurred. If the place of public accommodation consists of distinct facilities that offer distinct services, statutory damages may be assessed based on each denial of full and equal access to the distinct facility, and not upon the number of violations of construction-related accessibility standards identified at the place of public accommodation where the denial of full and equal access occurred.

(f) (1) Notwithstanding any other law, a defendant's liability for statutory damages in a construction-related accessibility claim against a place of public accommodation is reduced to a minimum of one thousand dollars (\$1,000) for each offense if the defendant demonstrates that it has corrected all construction-related violations that are the basis of a claim within 60 days of being served with the complaint, and the defendant demonstrates any of the following:

(A) The structure or area of the alleged violation was determined to be "CAsp-inspected" or "meets applicable standards" and, to the best of the defendant's knowledge, there were no modifications or alterations that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim that were completed or commenced between the date of that determination and the particular occasion on which the plaintiff was allegedly denied full and equal access.

(B) The structure or area of the alleged violation was the subject of an inspection report indicating "CAsp determination pending" or "Inspected by a CAsp," and the defendant has either implemented reasonable measures to correct the alleged violation prior to the particular occasion on which the plaintiff was allegedly denied full and equal access, or the defendant was in the process of correcting the alleged violation within a reasonable time and manner prior to the particular occasion on which the plaintiff was allegedly denied full and equal access.

(C) For a claim alleging a construction-related accessibility violation filed before January 1, 2018, the structure or area of the alleged violation was a new construction or an improvement that was approved by, and passed inspection by, the local building department permit and inspection process on or after January 1, 2008, and before January 1, 2016, and, to the best of the defendant's knowledge, there were no modifications or alterations that impacted compliance with respect to the plaintiff's claim that were completed or commenced between the completion date of

the new construction or improvement and the particular occasion on which the plaintiff was allegedly denied full and equal access.

(D) The structure or area of the alleged violation was new construction or an improvement that was approved by, and passed inspection by a local building department official who is a certified access specialist, and, to the best of the defendant's knowledge, there were no modifications or alterations that affected compliance with respect to the plaintiff's claim that were completed or commenced between the completion date of the new construction or improvement and the particular occasion on which the plaintiff was allegedly denied full and equal access.

(2) Notwithstanding any other law, a defendant's liability for statutory damages in a construction-related accessibility claim against a place of public accommodation is reduced to a minimum of two thousand dollars (\$2,000) for each offense if the defendant demonstrates both of the following:

(A) The defendant has corrected all construction-related violations that are the basis of a claim within 30 days of being served with the complaint.

(B) The defendant is a small business that has employed 25 or fewer employees on average over the past three years, or for the years it has been in existence if less than three years, as evidenced by wage report forms filed with the Economic Development Department, and has average annual gross receipts of less than three million five hundred thousand dollars (\$3,500,000) over the previous three years, or for the years it has been in existence if less than three years, as evidenced by federal or state income tax returns. The average annual gross receipts dollar amount shall be adjusted biannually by the Department of General Services for changes in the California Consumer Price Index for All Urban Consumers, as compiled by the Department of Industrial Relations. The Department of General Services shall post that adjusted amount on its Internet Web site.

(3) This subdivision shall not be applicable to intentional violations.

(4) Nothing in this subdivision affects the awarding of actual damages, or affects the awarding of treble actual damages.

(5) This subdivision shall apply only to claims filed on or after the effective date of Senate Bill 1186 of the 2011–12 Regular

Session of the Legislature. Nothing in this subdivision is intended to affect a complaint filed before that date.

(g) This section does not alter the applicable law for the awarding of injunctive or other equitable relief for a violation or violations of one or more construction-related accessibility standards, nor alter any legal obligation of a party to mitigate damages.

(h) In assessing liability under subdivision (d), in any action alleging multiple claims for the same construction-related accessibility violation on different particular occasions, the court shall consider the reasonableness of the plaintiff's conduct in light of the plaintiff's obligation, if any, to mitigate damages.

SEC. 12. Section 1938 is added to the Civil Code, to read:

1938. A commercial property owner or lessor shall state on every lease form or rental agreement executed on or after July 1, 2013, whether the property being leased or rented has undergone inspection by a Certified Access Specialist (CASP), and, if so, whether the property has or has not been determined to meet all applicable construction-related accessibility standards pursuant to Section 55.53.

SEC. 13. Section 425.50 is added to the Code of Civil Procedure, to read:

425.50. (a) An allegation of a construction-related accessibility claim in a complaint, as defined in subdivision (a) of Section 55.52 of the Civil Code, shall state facts sufficient to allow a reasonable person to identify the basis of the violation or violations supporting the claim, including all of the following:

(1) A plain language explanation of the specific access barrier or barriers the individual encountered, or by which the individual alleges he or she was deterred, with sufficient information about the location of the alleged barrier to enable a reasonable person to identify the access barrier.

(2) The way in which the barrier denied the individual full and equal use or access, or in which it deterred the individual, on each particular occasion.

(3) The date or dates of each particular occasion on which the claimant encountered the specific access barrier, or on which he or she was deterred.

(b) Any complaint alleging a construction-related accessibility claim, as those terms are defined in subdivision (a) of Section 55.3

of the Civil Code, shall be verified by the plaintiff. A complaint filed without verification shall be subject to a motion to strike.

(c) Nothing in this section shall limit the right of a plaintiff to amend a complaint under Section 472, or with leave of court under Section 473. However, any amended pleading alleging a construction-related accessibility claim shall be pled as required by subdivision (a).

(d) This section shall become operative on January 1, 2013.

SEC. 14. Section 4459.8 of the Government Code is amended to read:

4459.8. (a) The certification authorized by Section 4459.5 is effective for three years from the date of initial certification and expires if not renewed. The State Architect, upon consideration of any factual complaints regarding the work of a certified access specialist or of other relevant information, may suspend certification or deny renewal of certification.

(b) (1) The State Architect shall require each applicant for certification as a certified access specialist to pay fees, including an application and course fee and an examination fee, at a level sufficient to meet the costs of application processing, registration, publishing a list, and other activities that are reasonably necessary to implement and administer the certified access specialist program. The State Architect shall require each applicant for renewal of certification to pay a fee sufficient to cover the reasonable costs of reassessing qualifications of renewal applicants.

(2) The State Architect shall periodically review its schedule of fees to ensure that its fees for certification are not excessive while covering the costs to administer the certified access specialist program. The application fee for a California licensed architect, landscape architect, civil engineer, or structural engineer shall not exceed two hundred fifty dollars (\$250).

(c) All fees collected pursuant to this section shall be deposited into the Certified Access Specialist Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340, this fund is continuously appropriated without regard to fiscal years for use by the State Architect to implement Sections 4459.5 to 4459.8, inclusive.

SEC. 15. Chapter 7.5 (commencing with Section 4465) is added to Division 5 of Title 1 of the Government Code, to read:

## CHAPTER 7.5. DISABILITY ACCESS AND EDUCATION

4465. (a) There is hereby established in the Division of the State Architect a Disability Access and Education Revolving Fund, as set forth in Section 4470, for the purpose of increasing disability access and compliance with construction-related accessibility requirements by the following means:

(1) Increasing the number of private and public certified access specialists available to assist building owners and tenants to understand and comply with construction-related accessibility requirements by using some of the funds to moderate some of the costs of certification and testing.

(2) Establishing and maintaining oversight of the certified access specialist program, including, but not limited to, adopting best practices guidelines for certified access specialists, providing continuing education on construction-related accessibility requirements, and performing its audit and discipline functions under Sections 4459.7 and 4459.8.

(3) Increasing outreach efforts and developing educational resources for persons with disabilities and businesses to facilitate compliance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), the Unruh Civil Rights Act (Section 51 of the Civil Code), and Title 24 of the California Code of Regulations, as they relate to providing full and equal access to public facilities for persons with disabilities.

(b) In developing educational resources with this fund, emphasis shall be placed on the development and dissemination of educational materials, such as toolkits, modules, and checklists, as appropriate, to facilitate a commercial property owner's or tenant's understanding of, and compliance with, the construction-related accessibility requirements.

(c) In developing and disseminating educational resources with this fund, the Division of the State Architect shall consult and work with the Department of Rehabilitation and the California Commission on Disability Access, and may contract with those agencies to develop educational resources. It is the intent of the Legislature that any development or dissemination of educational resources under this section shall be coordinated with educational efforts by other state agencies so as to expand the reach and effectiveness of each effort or the combined efforts.

4467. (a) On and after January 1, 2013, and until December 31, 2018, any applicant for a local business license or equivalent instrument or permit, and from any applicant for the renewal of a business license or equivalent instrument or permit, shall pay an additional fee of one dollar (\$1) for that license, instrument, or permit, which shall be collected by the city, county, or city and county that issued the license, instrument, or permit.

(b) The city, county, or city and county shall retain 70 percent of the fees collected under this section, of which up to 5 percent of the retained moneys may be used for related administrative costs of this chapter. The remaining moneys shall be used to fund increased certified access specialist (CAsp) services in that jurisdiction for the public and to facilitate compliance with construction-related accessibility requirements. The highest priority shall be given to the training and retention of certified access specialists to meet the needs of the public in the jurisdiction as provided in Section 55.53 of the Civil Code.

(c) The remaining 30 percent of all fees collected under this section shall be transmitted on a quarterly basis to the Division of the State Architect for deposit in the Disability Access and Education Revolving Fund established under Sections 4465 and 4470. The funds shall be transmitted within 15 days of the last day of the fiscal quarter. The Division of the State Architect shall develop and post on its Internet Web site a standard reporting form for use by all local jurisdictions. Up to 75 percent of the collected funds in the Disability Access and Education Revolving Fund shall be used to establish and maintain oversight of the CAsp program and to moderate the expense of CAsp certification and testing.

(d) Each city, county, or city and county shall make an annual report, commencing March 1, 2014, to the Legislature and to the Chairs of the Senate and Assembly Committees on Judiciary, and the Chair of the Senate Committee on Budget and Fiscal Review and the Chair of the Assembly Committee on Budget, of the total fees collected in the previous calendar year and of its distribution, including the moneys spent on administrative services, the moneys spent to increase CAsp services, the moneys spent to fund programs to facilitate compliance, and the moneys transmitted to the Disability Access and Education Revolving Fund. A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795.

4469. On and after January 1, 2013, each city, county, or city and county shall provide to an applicant for a business license or equivalent instrument or permit and to an applicant for the renewal of a business license or equivalent instrument or permit, the following information:

“Under federal and state law, compliance with disability access laws is a serious and significant responsibility that applies to all California building owners and tenants with buildings open to the public. You may obtain information about your legal obligations and how to comply with disability access laws at the following agencies:

The Division of the State Architect at [www.dgs.ca.gov/dsa/Home.aspx](http://www.dgs.ca.gov/dsa/Home.aspx).

The Department of Rehabilitation at [www.rehab.cahwnet.gov](http://www.rehab.cahwnet.gov).

The California Commission on Disability Access at [www.ccda.ca.gov](http://www.ccda.ca.gov).”

4470. (a) All funds received by the Division of the State Architect under this chapter shall be deposited in the Disability Access and Education Revolving Fund, which is hereby established in the State Treasury.

(b) Notwithstanding Section 13340, moneys deposited in the fund are hereby continuously appropriated without regard to fiscal years to the Division of the State Architect for purposes of this chapter.

(c) Notwithstanding Section 10231.5, the State Architect shall make an annual report, commencing March 1, 2014, to the Legislature and to the Chairs of the Senate and Assembly Committees on Judiciary, and the Chair of the Senate Committee on Budget and Fiscal Review and the Chair of the Assembly Committee on Budget, of the total fees transmitted to the fund in the previous calendar year and of its distribution, including the moneys spent on administrative services, the moneys spent to moderate certification and examination fees for the certified access specialist program, the moneys spent on establishing and maintaining oversight of the certified access specialist program, and the moneys spent on developing and disseminating educational materials to facilitate compliance. A report to be submitted pursuant

to this subdivision, shall be submitted in compliance with Section 9795.

SEC. 16. Section 8299.05 of the Government Code is amended to read:

8299.05. (a) The commission may recommend, develop, prepare, or coordinate materials, projects, or other activities, as appropriate, relating to any subject within its jurisdiction.

(b) The commission shall provide, within its resources, information regarding any of the following:

(1) Preventing or minimizing problems of compliance by California businesses by providing educational services, including outreach efforts, and by preparing and hosting on its Internet Web site a Guide to Compliance with State Laws and Regulations Regarding Disability Access Requirements.

(2) Recommending programs to enable persons with disabilities to obtain full and equal access to public facilities.

(3) Providing information as requested by the Legislature on disability access issues and compliance.

SEC. 17. Section 8299.06 of the Government Code is repealed.

SEC. 18. Section 8299.06 is added to the Government Code, to read:

8299.06. (a) A priority of the commission shall be the development and dissemination of educational materials and information to promote and facilitate disability access compliance.

(b) The commission shall work with other state agencies, including the Division of the State Architect and the Department of Rehabilitation, to develop educational materials and information for use by businesses to understand its obligations to provide disability access and to facilitate compliance with construction-related accessibility standards.

(c) The commission shall develop and make available on its Internet Web site, or make available on its Internet Web site if developed by another governmental agency, including Americans with Disabilities Act centers, toolkits or educational modules to assist a California business to understand its obligations under the law and to facilitate compliance with respect to the top 10 alleged construction-related violations, by type, as specified in subdivision (a) of Section 8299.08. Upon completion of this requirement, the commission shall develop and make available on its Internet Web site, or work with another agency to develop, other toolkits or

educational modules that would educate businesses of the accessibility requirements and to facilitate compliance with that requirement.

(d) The commission shall post on its Internet Web site educational materials and information that will assist building owners, tenants, building officials, and building inspectors to understand the disability accessibility requirements and to facilitate compliance with disability access laws. The commission shall at least annually review the educational materials and information on disability access requirements and compliance available on the Internet Web site of other local, state, or federal agencies, including Americans with Disabilities Act centers, to augment the educational materials and information developed by the commission.

(e) The commission shall, to the extent feasible, coordinate with other state agencies and local building departments to ensure that information provided to the public on disability access requirements is uniform and complete.

SEC. 19. Section 8299.07 of the Government Code is repealed.

SEC. 20. Section 8299.07 is added to the Government Code, to read:

8299.07. (a) On or before April 15, 2013, the commission shall report to the Legislature, and to the Chairs of the Senate and Assembly Committees on Judiciary, of its activities and efforts since the commission was established to implement Sections 8299.05 and 8299.06, including the provisions that were law prior to amendment or repeal in the 2011–12 Regular Session. Commencing in 2014, and notwithstanding Section 10231.5, the commission shall report on or before January 31 and annually thereafter to the Legislature, and to the Chairs of the Senate and Assembly Committees on Judiciary, of its ongoing efforts to implement Sections 8299.05 and 8299.06, as amended in the 2011–12 Regular Session.

(b) A report to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795.

SEC. 21. Section 8299.08 of the Government Code is repealed.

SEC. 22. Section 8299.08 is added to the Government Code, to read:

8299.08. The commission shall compile the following data with respect to any demand letter or complaint sent to the

commission pursuant to Section 53.32 of the Civil Code and post the information on its Internet Web site, pursuant to the following:

(a) The commission shall identify the various types of construction-related physical access violations alleged in the demand letters and in the complaints, respectively, and shall tabulate the number of claims alleged for each type of violation in the demand letters and complaints, respectively. For purposes of this subdivision, any demand for money letters shall be grouped as demand letters.

(b) Periodically, but not less than every six months beginning July 31, 2013, the commission shall post on its Internet Web site a list, by type, of the 10 most frequent types of accessibility violations alleged in the demand letters and in the complaints, respectively, and the numbers of alleged violations for each listed type of violation for the prior two quarters.

(c) The commission shall, on a quarterly basis, identify and tabulate the number of demand letters and complaints received by the commission. The commission shall further ascertain whether a complaint was filed in state or federal court and tabulate the number of complaints filed in state or federal court, respectively. This data shall be posted on the commission's Internet Web site periodically, but not less than every six months beginning July 31, 2013.

(d) Commencing in 2014, and notwithstanding Section 10231.5, the commission shall make an annual report to the Legislature and the Chairs of the Senate and Assembly Committees on Judiciary by January 31 of each year of the tabulated data for the preceding calendar year as set forth in subdivisions (a) to (c), inclusive. A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795.

SEC. 23. Section 18944.15 is added to the Health and Safety Code, to read:

18944.15. (a) Upon the publication date of the 2013 California Building Standards Code as adopted by the commission as part of the 2012 triennial code adoption cycle, for the purpose of any claim brought under Section 51, 54, 54.1, or 55 of the Civil Code based in whole, or in part, on an alleged violation of a construction-related accessibility standard, compliance with the building standards for disabled accessibility as provided in Chapter

11B of Part 2 of Title 24 of the 2013 California Building Standards Code shall be authorized as an alternative method of compliance.

(b) Subdivision (a) shall become inoperative when the provisions of the 2013 California Building Standards Code become effective pursuant to Section 18938.

(c) This section shall become operative on January 1, 2013.

(d) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 24. The Legislature finds and declares that a very small number of plaintiffs' attorneys have been abusing the right of petition under Sections 52 and 54.3 of the Civil Code by issuing a demand for money to a California business owner that demands the owner pay a quick settlement of the attorney's alleged claim under those laws or else incur greater liability and legal costs if a lawsuit is filed. These demands for money allege one or more, but frequently multiple, claims for asserted violations of a construction-related accessibility standard and often demand a quick money settlement based on the alleged multiple claims without seeking and obtaining actual repair or correction of the alleged violations on the site. These "pay me now or pay me more" demands are used to scare businesses into paying quick settlements that only financially enrich the attorney and claimant and do not promote accessibility either for the claimant or the disability community as a whole. These practices, often involving a series of demand for money letters sent to numerous businesses, do not promote compliance with the accessibility requirements and erode public support for and confidence in our laws. Therefore, the Legislature finds and declares that it is necessary and appropriate to enact Sections 55.31 and 55.32 of the Civil Code, and Section 425.50 of the Code of Civil Procedure to protect the public's confidence and support of the right to petition under Sections 52 and 54.3 of the Civil Code.

SEC. 25. The Legislature finds and declares all of the following:

(a) Subdivision (h) of Section 55.56 of the Civil Code, as added by Section 11 of this act, is intended to address the misuse of Sections 52 and 54.3 of the Civil Code by a small minority of disability rights lawyers and plaintiffs. These lawyers and plaintiffs have alleged in demand letters and complaints that they were

deterred on repeated occasions by the same violation of a construction-related accessibility standard and thereby assert multiple claims for the same violation without a reasonable explanation for the repeated conduct in light of the obligation to mitigate damages. Their assertions of these “stacked” multiple claims for the same construction-related accessibility violation on different occasions are made to substantially increase the purported statutory liability of a defendant in order to intimidate and pressure the defendant into making a quick monetary settlement. The provisions of subdivision (h) of Section 55.56 of the Civil Code reiterate that where multiple claims for the same construction-related accessibility violation on separate particular occasions are alleged, a plaintiff’s conduct must have a reasonable explanation for the asserted need for multiple visits to a site where a known barrier violation would deny full and equal access, in light of the obligation to mitigate damages.

(b) Correspondingly, if there is a reasonable explanation in light of the obligation to mitigate damages for the need to make multiple visits to a site where a known barrier violation would deny full and equal access, a multiple claim for repeated violations of the same construction-related accessibility standard may properly lie. In addition, there may be clear instances when the needs of a person with a disability and circumstances may make mitigation efforts impossible or futile in cases involving multiple instances of deterrence on separate particular occasions where the individual has a reasonable explanation for the need for multiple visits to the same site.

(c) Further, nothing in subdivision (h) of Section 55.56 of the Civil Code is intended to change existing law with respect to the fact that an alleged failure to mitigate damages is pled and proven as an affirmative defense.

SEC. 26. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 27. The Legislature finds and declares that promoting uniform statewide compliance with construction-related accessibility requirements set forth in the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) and the California Building Standards Code is a matter of statewide

concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this act shall apply to all cities, including charter cities.

SEC. 28. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 29. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to avoid unnecessary litigation and to facilitate compliance with the disability access law, it is necessary that this act take effect immediately.



















Approved \_\_\_\_\_, 2012

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*Governor*